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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------|------------------|
| 10/733,657 | 12/11/2003 | Robert A. Pyles | PO-8027/MD-03-32 | 2177 |
| 157 7590 10/31/2007 BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205 | | | EXAMINER DANIELS, MATTHEW J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1791 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 10/31/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|---|--------------------------------|------------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/733,657 | Applicant(s) PYLES ET AL. | |
| | Examiner Matthew J. Daniels | Art Unit 1791 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22 and 24-28.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: Note the attached Notice of References Cited (PTO-892).

Continuation of 3. NOTE: The subject matter is drawn to claim limitations that would require at least further search and consideration, and would also require further consideration of all claims dependent thereon.

Continuation of 11. does NOT place the application in condition for allowance because: See the enclosed response to arguments. Additional arguments drawn to the rejections under section 102(b) are drawn to claim limitations that are not being entered.

Response to Arguments

1. Applicant's arguments filed 24 September 2007 have been fully considered. The arguments appear to be on the following grounds:

- a) The mold release agent is a lubricant that is applied to a mold surface to facilitate release of the molded part, and a surfactant refers to a compound that alters the surface tension of a liquid in which it is dissolved, and thereby improves wetting. The Examiner has not met the duty to prove that which he perceives to be an overlap, and it is not up to the Applicants to prove the negative. The Examiner's assertion that a surfactant is interpreted to provide the function of a mold release agent is unsupported and lacks merit.
- b) The Examiner's position that the presently claimed "IR absorber" or "optical brightener" are claimed as "dye" in USPN 7175675 is incorrect, and the Examiner has not met the burden to produce evidence. Thus, this obviousness-type double patenting rejection is clearly erroneous.
- c) With regard to the 102(e) rejection over Pyles (WO 03/083207), a dye does not describe an IR absorber or optical brightener.
- d) Kawashima disclosed a coated lens. The inventive method requires the claimed carrier in a particular amount.

2. Response

- a) The obviousness-type double patenting rejection over USPN 6949127 is withdrawn in view of the different statutory classes of invention and the arguments on pages 8 and 9 of the 24 September 2007 reply.

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b) Applicants appear to argue that the IR absorber or optical brightener fall outside the scope of the 7175675 Patent, however, it may be informative to also consider Claim 15 of the 7175675 Patent, which recites “said dye bath further comprises at least one of, UV stabilizers, optical brighteners, mold release agents, antistatic agents, thermal stabilizers, IR absorbers and antimicrobial agents.” These substances are, therefore, within the scope of the dye bath of Claim 1 of the 7175675 Patent. By their explicit recitation in Claim 15 of the ‘675 Patent, it is submitted that the Examiner has met any burden necessary to maintain this obviousness-type double patenting rejection.

c) A dye or tint filters transmitted light. Although not disclosed to be the direct objective of the Pyles process, it is submitted that absorption of some IR would be inherent. It is noted that any and all information regarding the absorption spectra of the dyes and tints recited on pages 5 and 6 of the Pyles publication (WO 03/083207) is now material to patentability. Additionally, the WO 03/083207 document cites to “The Colour Index”, 3rd Edition, published jointly by the Society of Dyes and Colors and the American Association of Textile Chemists and Colorists (1971) at page 6, lines 3-5, which may also be material to patentability.

Additionally, please consider Rule (USPN 4481314) which states “The novel infrared absorbent compounds of this invention comprise anthraquinone...” (1:21-23).

d) These arguments are drawn to claim amendments which are not being entered.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 10/27/07



CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER